

STATE OF OKLAHOMA

1st Session of the 55th Legislature (2015)

HOUSE BILL 1295 By: Wesselhoft

AS INTRODUCED

An Act relating to aircraft; creating the Oklahoma Unmanned Aerial Surveillance Act; defining terms; requiring use of unmanned aerial vehicles to comply with Federal Aviation Administration rules; prohibiting agent of state from using unmanned aerial vehicle; proscribing information disclosure; providing exceptions; limiting use in exceptions provided; barring facial recognition and other matching technology on nontargets; excluding equipping unmanned aerial vehicle with weapons; providing exception; blocking use of information gathered in violation of the act as evidence; granting exception for exculpatory evidence; permitting operation and disclosure of information in emergency situations; listing scenarios for emergency situation; terminating operation once information is gathered or warrant is acquired; deeming certain information to be obtained in violation of the act; requiring inventory; providing for delay in notification if adverse result might occur; specifying what constitutes an adverse result; allowing extensions of delayed notification; directing delivery of notice to subject of collected information; detailing contents of notice; mandating proceeding to determine disciplinary action for violation of act; prescribing punishment and fine for violations of act; permitting civil action for violations of act; awarding attorney fees and costs to prevailing party; directing recordkeeping for each use of an unmanned aerial vehicle; listing contents of record; requiring record to be retained for specified

time; providing for release of record through the Oklahoma Open Records Act; mandating records be given to the Administrator of the Courts annually; prescribing record to be retained for minimum length of time; directing release of record through an Open Records Act request; providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION . NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 400 of Title 3, unless there is created a duplication in numbering, reads as follows:

A. This act shall be known and may be cited as the "Oklahoma Unmanned Aerial Surveillance Act".

B. As used in the Oklahoma Unmanned Aerial Surveillance Act:

1. "Agent of the state or any political subdivision of the state" means any state or local agency, including but not limited to a law enforcement entity or any other investigative entity, agency, department, division, bureau, board or commission or any individual acting or purporting to act for or on behalf of a state or local agency; and

2. "Unmanned aerial vehicle" means an aircraft that is operated

without the possibility of direct human intervention from within or on the aircraft.

SECTION . NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 401 of Title 3, unless there is created a duplication in numbering, reads as follows:

A. Any use of unmanned aerial vehicles shall fully comply with all Federal Aviation Administration requirements and guidelines.

B. Except as provided in the Oklahoma Unmanned Aerial Surveillance Act, it is unlawful for an agent of the state or any political subdivision of the state to operate an unmanned aerial vehicle or to disclose or receive information acquired through the operation of an unmanned aerial vehicle.

C. Exceptions:

1. Consent. It shall not be unlawful under the Oklahoma Unmanned Aerial Surveillance Act to disclose or receive information about any person acquired through the operation of an unmanned aerial vehicle if the person has given written consent to the disclosure;

2. Emergency Situations. It shall not be unlawful under the Oklahoma Unmanned Aerial Surveillance Act for an agent of the state or any political subdivision of the state to operate an unmanned

aerial vehicle and for information from the operation to be disclosed or received if the unmanned aerial vehicle is used in circumstances in which it is reasonable to believe that there is an imminent threat to the life or safety of a person, and to assist the person subject to the following limitations:

- a. the request shall document the factual basis for the emergency, and
- b. not later than forty-eight (48) hours after the agent of the state or any political subdivision of the state begins operation of an unmanned aerial vehicle, a supervisory official shall file a sworn statement with the appropriate court setting forth the grounds for the emergency use;

3. Warrant or Order.

- a. an unmanned aerial vehicle may be operated and information from the operation disclosed in order to collect information from a nonpublic area only pursuant to a warrant issued by a court of competent jurisdiction and in full compliance with Sections 1221 through 1241 of Title 22 of the Oklahoma Statutes, or

b. an unmanned aerial vehicle may be operated and information from the operation disclosed in order to collect information from a public area pursuant to a warrant authorized under subparagraph a of this paragraph or pursuant to an order issued by any court of competent jurisdiction if the agent of the state or any political subdivision of the state offers specific and articulable facts demonstrating reasonable suspicion of criminal activity, that the operation of the public unmanned aircraft system will uncover the activity, and that alternative methods of data collection are either cost-prohibitive or present a significant risk to any person's bodily safety. The order shall not be issued for a period longer than forty-eight (48) hours. Extensions of an order may be granted but shall be no longer than the authorizing judge deems necessary to achieve the purposes for which it was granted and in no event for longer than thirty (30) days;

4. Non-law-enforcement operations. It shall not be unlawful

under the Oklahoma Unmanned Aerial Surveillance Act for an agent of the state or any political subdivision of the state to operate an unmanned aerial vehicle and for information derived from the operation to be disclosed if no part of any information and no evidence derived from the operation may be received as evidence in any trial, hearing, or other proceeding in or before any court, grand jury, department, officer, agency, regulatory body, legislative committee or other authority of the state or a political subdivision of the state, or for any intelligence purpose;

5. Public land. An unmanned aerial vehicle may be operated by any authorized agent of the state or any political subdivision of the state or federal agency, when conducting surveillance exclusively of public land or property; provided, that the surveillance shall not be targeted at gathering or producing information concerning any private individuals or organizations that are using or present on the land or property. The entity conducting surveillance shall notify the agency that has oversight of the target public land or property prior to conducting the surveillance; and

6. Scientific Research and Cartography. An unmanned aerial vehicle may be operated by any authorized agent of the state or any

political subdivision of the state or federal agency when conducting scientific research, including but not limited to climatological, agricultural, hydrological or meteorological research, or for data or image collection for cartography or digital mapping for geographic information systems (GIS). Operation under this paragraph shall not be targeted at gathering or producing information concerning any private individuals or organizations, and shall not include any biometric or facial recognition operation.

D. When unmanned aerial vehicles are used pursuant to subsection C of this section, they shall be operated in a manner to collect data only on the target and to avoid data collection on individuals, homes or areas other than the target. Neither facial recognition nor other biometric matching technology may be used on nontarget data collected by an unmanned aerial vehicle.

E. Unmanned aerial vehicles shall not be equipped with weapons except when used by duly authorized members, agents or contractors of the Department of Defense or the United States military.

SECTION . NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 402 of Title 3, unless there is created a duplication in numbering, reads as follows:

Whenever an agent of the state or any political subdivision of the state uses an unmanned aerial vehicle, no part of information acquired and no evidence derived from the operation may be received as evidence in any trial, hearing or other proceeding in or before any court, grand jury, department, officer, agency, regulatory body, legislative committee or other authority of the state or any political subdivision of the state if that information or data was collected in violation of the Oklahoma Unmanned Aerial Surveillance Act. This exclusion shall not apply to exculpatory evidence offered by a private individual or organization, nor to evidence offered or received to show or prove a violation of this act.

SECTION . NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 403 of Title 3, unless there is created a duplication in numbering, reads as follows:

A. Emergency Situation Exception. Notwithstanding any other provision of the Oklahoma Unmanned Aerial Surveillance Act, an agent of the state or any political subdivision of the state may operate an unmanned aerial vehicle and disclose information from the operation if:

1. The agent of the state or any political subdivision of the

state reasonably determines that an emergency situation exists that:

a. involves:

- (1) immediate danger of death or serious physical injury to any person, including but not limited to missing children, wildfires, severe weather or other natural disasters, or
- (2) conspiratorial activities threatening the national security interest, and

b. requires operation of an unmanned aerial vehicle before a warrant or order authorizing an operation can, with due diligence, be obtained; or

2. There are grounds upon which a warrant or order could be entered to authorize the operation, provided that an application for a warrant or order approving the operation is made within forty-eight (48) hours after the operation begins to occur.

B. Failure to Obtain a Warrant or Order.

1. Termination of Operation. In the absence of a warrant or order, an operation of an unmanned aerial vehicle carried out under subsection A of this section shall immediately terminate when the

information sought is obtained or when the application for the warrant or order is denied, whichever is earlier.

2. Prohibition on Use as Evidence. In the event an application for approval is denied, the information obtained from the operation of an unmanned aerial vehicle shall be treated as having been obtained in violation of the Oklahoma Unmanned Aerial Surveillance Act and an inventory shall be served on the person named in the application.

SECTION . NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 404 of Title 3, unless there is created a duplication in numbering, reads as follows:

A. An agent of the state or any political subdivision of the state under paragraph 3 of subsection C of Section 2 of this act or Section 3 of this act may, where a court order or warrant is sought, include in the application a request, which the court shall grant, for an order delaying the notification for a period not to exceed ninety (90) days, if the court determines that there is reason to believe that notification of the existence of the court order may have an adverse result described in subsection B of this section.

B. An adverse result for the purposes of subsection A of this

section is:

1. Endangering the life or physical safety of an individual;
2. Flight from prosecution;
3. Destruction of or tampering with evidence;
4. Intimidation of potential witnesses; or
5. Otherwise seriously jeopardizing an investigation or unduly delaying a trial.

C. Extensions of the delay of notification of up to ninety (90) days each may be granted by the court upon application or by certification by the agent of the state or any political subdivision of the state.

D. Upon expiration of the period of delay of notification, the agent of the state or any political subdivision of the state shall serve upon, or deliver by registered or first-class mail to, the person or persons upon whom information was collected, a copy of the warrant or order together with notice that:

1. States with reasonable specificity the nature of the law enforcement inquiry; and

2. Informs the person or persons upon whom information was collected:

- a. that notification was delayed,
- b. what governmental entity or court made the certification or determination pursuant to which that delay was made, and
- c. which provision of the Oklahoma Unmanned Aerial Surveillance Act allowed the delay.

SECTION . NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 405 of Title 3, unless there is created a duplication in numbering, reads as follows:

A. If a court or appropriate department or agency determines that an agent of the state or any political subdivision of the state has violated any provision of the Oklahoma Unmanned Aerial Surveillance Act, and the court or appropriate department or agency finds that the circumstances surrounding the violation raise serious questions about whether or not the agent of the state or any political subdivision of the state acted willfully or intentionally with respect to the violation, the department or agency shall, upon receipt of a true and correct copy of the decision and findings of the court or appropriate department or agency, promptly initiate a proceeding to determine whether disciplinary action against the agent

of the state or any political subdivision of the state is warranted. The director of such department or agency shall notify the Attorney General of all such proceedings and provide the Attorney General with the reasons for each determination made.

B. Any violation of the Oklahoma Unmanned Aerial Surveillance Act shall be punishable as a misdemeanor, with a sentence not to exceed six (6) months in the county jail and a fine of not less than Two Hundred Fifty Dollars (\$250.00) and not more than Two Thousand Five Hundred Dollars (\$2,500.00) per violation.

C. Regardless of whether any action is taken pursuant to subsection A or B of this section, any private individual or organization alleging a violation of the Oklahoma Unmanned Aerial Surveillance Act may bring a civil action in district court for declaratory and injunctive relief, and shall be entitled to reasonable attorney fees and costs upon prevailing.

SECTION . NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 406 of Title 3, unless there is created a duplication in numbering, reads as follows:

A. Record keeping. The state or any political subdivision using unmanned aerial vehicles pursuant to the Oklahoma Unmanned Aerial

Surveillance Act shall maintain a log recording each use of an unmanned aerial vehicle. The log shall include, at a minimum, the date, time and location of use; the target of data collection; the type of data collected; the justification for the deployment; the operator of the unmanned aerial vehicle; the person applying for a warrant authorizing the use; whether an exception to the warrant requirements specified in the Oklahoma Unmanned Aerial Surveillance Act was used to justify the deployment of an unmanned aerial vehicle; whether a warrant request was granted or denied; which court and judge authorized or denied a warrant application; and whether any agent of the state or political subdivision was subject to any discipline or criminal proceedings for violating any provision of this act.

B. The log provided for in this section shall be retained by the state or for a minimum of three (3) years.

C. The log shall be made available subject to a request made through the Oklahoma Open Records Act.

D. In December of each year the state or any political subdivision maintaining a log pursuant to subsection A of this section shall report their logs to the Administrator of the Courts.

The Administrator of the Courts shall retain these records for a minimum of ten (10) years and the records shall be made available subject to a request made through the Oklahoma Open Records Act.

SECTION . This act shall become effective November 1, 2015.

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